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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,596	01/15/2002	Lawrence J. Putz	1801	6598
24264	7590	12/07/2005	EXAMINER	
MARTIN & HENSON, P.C. 9250 W 5TH AVENUE SUITE 200 LAKEWOOD, CO 80226			HWU, DAVIS D	
			ART UNIT	PAPER NUMBER
			3752	
DATE MAILED: 12/07/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

TAK

Office Action Summary	Application No.	Applicant(s)
	10/050,596	PUTZ, LAWRENCE J.
	Examiner	Art Unit
	Davis D. Hwu	3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 November 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8, 10-34, 36 and 37 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 12-30, 38 and 39 is/are allowed.
- 6) Claim(s) 1, 5-8, 10, 31-33, 36 and 37 is/are rejected.
- 7) Claim(s) 2-4, 11, 22 and 34 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

Response to Amendment

1. Applicant's amendment and arguments of November 25, 2005 are acknowledged and entered.
2. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

4. Claims 1, 10, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee.

Lee shows a piece of jewelry as recited comprising a securement member 26, a setting including a base 16 and a piece of porous material 40 including a top surface and a bottom surface, the piece being affixed to the setting in spaced-apart relation to the base and at an orientation relative to the securement member such that ambient air can flow between the base and the piece whereby air can flow about at least a portion of both the top and bottom surfaces. Regarding claim 31, since Lee shows all of the structural limitations of the device of the instant invention, the method as recited would have been obvious to one having ordinary skill in the art.

Claim Rejections - 35 USC § 103

5. Claims 5, 6, 36, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee.

The shape of the porous material is an obvious matter of design choice since such a modification would have involved a mere change in the shape of a component which is generally recognized as being within the level of ordinary skill in the art. The method steps recited in claims 36 and 37 are obvious matters of user preferences.

6. Claims 7, 8, 32, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee in view of Muhmel et al. (DE 197 53 956).

Muhmel et al. teach a scent cartridge comprising ceramic which contains sintered aluminum oxide. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of Lee by replacing the porous material with a porous material containing sintered aluminum oxide as taught by Muhmel et al. since Muhmel et al. teaches that such arrangements provide for an inexpensive and easily manufactured device.

Allowable Subject Matter

7. Claims 2-4, 11, 22, and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 12-30, 38, and 39 are allowed.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Booth et al., Dusek et al., and Spector are pertinent to Applicant's invention.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Davis D. Hwu whose telephone number is 571-272-4904. The examiner can normally be reached on 8:00-4:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on 571-272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3752

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Davis Hwu



**DAVIS HWU
PRIMARY EXAMINER**